

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Ismael Guillermo Hernandez,  
Plaintiff  
v.  
Sheriff Joe Lombardo, et al.,  
Defendants

**2:16-cv-01219-JAD-NJK**

**Order Denying Motion for Permission  
to File and Revoking Permission to  
Proceed *in forma pauperis***

**[ECF No. 15]**

Ismael Guillermo Hernandez brings this civil-rights action to challenge the ongoing criminal proceedings against him in Nevada's Eighth Judicial District Court. On January 24, 2017, the magistrate judge entered a report recommending that I dismiss this action without prejudice to Hernandez's ability to bring his claims in the proper forum at the proper time.<sup>1</sup> On February 10, 2017, I adopted without review the magistrate judge's then-unobjected to report and recommendation.<sup>2</sup> A few days after I issued my dismissal order, the court received a timely dispatched objection to the report and recommendation, and Hernandez moved for leave to file an amended complaint and later appealed my dismissal order to the Ninth Circuit. The Ninth Circuit has referred this matter for me to determine whether Hernandez's *in forma pauperis* status should continue on appeal, which requires me to determine whether Hernandez's appeal is frivolous or taken in bad faith.<sup>3</sup>

In making this determination, I first take this opportunity to review the magistrate judge's report and recommendation and Hernandez's objections de novo. I agree with the magistrate judge that Hernandez's claims are barred by *Younger v. Harris*,<sup>4</sup> and that all four requirements for *Younger*

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<sup>1</sup> ECF No. 8.

<sup>2</sup> ECF No. 8.

<sup>3</sup> See 28 U.S.C. § 1915(a)(3); see also *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002).

<sup>4</sup> *Younger v. Harris*, 401 U.S. 37, 44 (1972).

1 abstention are present here. I therefore decline to enjoin the Nevada state court's criminal  
2 proceedings against Hernandez or require that court to grant his bail request. Because these defects  
3 cannot be cured by amendment, I deny Hernandez's motion for leave to file an amended complaint.<sup>5</sup>  
4 And because this court lacks jurisdiction to enjoin Hernandez's ongoing state criminal proceedings, I  
5 hereby certify that any appeal in this action is frivolous and taken in bad faith.

6 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Hernandez's  
7 motion for permission to file new complaint [ECF No. 15] is **DENIED**, and Hernandez's *in forma*  
8 *pauperis* status is hereby REVOKED.

9 The Clerk of Court is directed to CLOSE THIS CASE.

10 Dated this 21st day of March, 2017.

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12 Jennifer A. Dorsey  
13 United States District Judge  
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<sup>5</sup> ECF No. 15.